

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

FILED  
U.S. DISTRICT COURT  
NORTHERN DIST. OF TX  
FT. WORTH DIVISION

2010 JUN -7 PM 3:47

CLERK OF COURT

UNITED STATES OF AMERICA

vs.

HERBERT P. ANDERSON (08)

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§  
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§

No. 4:09-CR-115-A

OPPOSITION TO THE RELEASE OF BOND MONEY & MOTION FOR  
DISCOVERY

The United States of America ("the Government") opposes the Request for Release of Bond Money which the defendant's wife Elizabeth Anderson filed on June 2, 2010 and in accordance with this Court's previously Preliminary Order of Forfeiture and Fed.R. Crim.P. 32.2(b)(3). In support, the Government would show the Court the following:

**Relevant Background**

On January 15, 2010, the court issued a Preliminary Order of Forfeiture [doc. #481] in accordance with 21 U.S.C. § 853 which included a money judgment for:

A sum of money equal to \$5,000,000 in United States currency, representing the amount of proceeds obtained as a result of the Count One conspiracy offense, for which the defendant is jointly and severally liable with the defendants John Reginald Holt and Wade Phillip Smith<sup>1</sup>.

The Order further provided that "pursuant to Fed. R. Crim. P. 32.2(b) that the

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<sup>1</sup>At sentencing, this money judgment was amended to include co-defendant Juan Gloria Cruz.

Government may apply to the Court to conduct any discovery that the Court considers proper to help identify, locate, or to dispose of the property, should the circumstances present themselves . . .”

### **Argument**

The defendant’s wife is now seeking the release of \$25,000 in United States currency that may be used to further satisfy the money judgment against the defendant. The source of the funds is unknown at this time, but as Texas is a community property state, at least half of the \$25,000 would be the property of her defendant husband and subject to forfeiture as a substitute asset. Discovery of the source of the funds may result in revealing information that the entire \$25,000 is subject to forfeiture as a substitute asset. Therefore, the Government submits that the circumstances now presented warrant further discovery regarding the source of the funds originally posted as bail for the defendant.

A Court may authorize taking of depositions to locate assets subject to forfeiture. *Cf. United States v. Saccoccia*, 898 F. Supp. 53, 60-61 (D.R.I. 1995) (the Government can take depositions of defense counsel to determine the source of their fees for the purpose of locating a pool of assets controlled by the defendant that is subject to forfeiture). A Court may also issue orders to third parties to discover location and value of forfeited assets. *Cf. United States v. Barnette*, 129 F.3d 1179, 1181 (11th Cir. 1997) (defendant and his wife held in contempt for failing to abide by order regarding value and location of

stock defendant had transferred to his wife to avoid forfeiture).

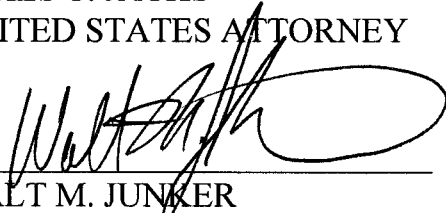
The Government respectfully requests that this Court issue an order directing the defendant's wife Elizabeth Anderson (a.k.a. Elizabeth Leticia Marmolejo Garcia Anderson) to submit documentary proof to the Court regarding what how the \$25,000 which was submitted as bail money in this case came into being. Such proof should consist of more than merely bank documents and should reveal how the money was actually generated or earned. In the event such proof is insufficient in detail, the Government will then apply to the court for permission to depose Elizabeth Anderson.

**Relief Sought**

THEREFORE, the Government respectfully requests that this Court issue an order directing the defendant's wife Elizabeth Anderson (a.k.a. Elizabeth Leticia Marmolejo Garcia Anderson) to submit documentary proof to the Court regarding the ultimate source of the \$25,000 which was submitted as bail money in this case.

Respectfully submitted,

JAMES T. JACKS  
UNITED STATES ATTORNEY

  
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WALT M. JUNKER  
Assistant United States Attorney  
Texas State Bar No. 24038115  
Burnett Plaza, Suite 1700  
801 Cherry Street - Unit #4  
Fort Worth, Texas 76102-6882  
Fort Worth Telephone: (817) 252-5251  
Dallas Telephone: (214) 659-8682  
Facsimile: (817) 978-3094  
[Walt.Junker@usdoj.gov](mailto:Walt.Junker@usdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on June 7, 2010, I sent a copy of the foregoing document to Elizabeth Anderson (a.k.a. Elizabeth Leticia Marmolejo Garcia Anderson) by first class mail, postage prepaid to 849 Oak Crest Drive, Fort Worth, Texas 76120.

  
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WALT M. JUNKER  
Assistant United States Attorney